

H & N LOGISTICS, LLC
Transportation Agreement
(Broker / Carrier)

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between H & N Logistics, LLC, a Wisconsin limited liability company domiciled in Madison, Wisconsin, (hereinafter referred to as "H & N"), and _____ of _____, _____, (hereinafter referred to as "CARRIER").

WITNESSETH

WHEREAS, H & N is duly authorized to engage in operations as a property broker of regulated freight moving in interstate or foreign commerce pursuant to License No. MC-433057 issued by the Federal Motor Carrier Safety Administration, controls the transportation which is the subject of this Agreement, and desires to tender to CARRIER for transportation such goods of its customers as are offered to H & N; and

WHEREAS CARRIER is duly authorized by the Federal Motor Carrier Safety Administration or its predecessor to engage in operations in interstate or foreign commerce as a contract carrier, by motor vehicle, in Docket No. MC-_____ and desires to participate in the transportation of such freight as is tendered to CARRIER by H & N by providing services designed to meet the special and distinct needs of the shipper;

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the parties mutually agree as follows:

1. Representations and Warranties of CARRIER. CARRIER represents and warrants to H & N that it:

a. Has been issued Contract Motor Carrier Permit No. MC-_____ by the Federal Motor Carrier Safety Administration or its predecessor agency, and such authority is now, and will continue during the term of this Agreement to be, valid and subsisting.

b. Has been issued appropriate operating authorities, licenses, certificates or permits for operations in the states and provinces where the operations contemplated by this Agreement shall be performed.

c. Has and will maintain, while this Agreement remains in effect, the public liability and cargo insurance described in paragraphs (8) and (9) of this Agreement.

d. Makes the representations herein for the purpose of inducing H & N to enter into this Agreement.

e. Has authorized the person(s) executing this Agreement to do so on CARRIER'S behalf.

f. Is in compliance with all applicable federal, state, provincial and local laws relating to its service and the performance of this Agreement and will remain in compliance with all such laws during the entire term of this Agreement.

g. Has in effect an effective safety program and has been issued a "Satisfactory" Safety Rating by the Federal Motor Carrier Safety Administration; will maintain an effective safety program and a "Satisfactory" Safety Rating during the term of this Agreement; and is in compliance with all applicable federal, state and provincial safety regulations and requirements.

2. Representations and Warranties of H & N. H & N represents and warrants to CARRIER that it:

a. Has been issued Motor Carrier Property Broker License No. MC-433057 by the Federal Motor Carrier Safety Administration and such authority is now, and will continue during the term of this Agreement to be, valid and subsisting.

b. Has now and will maintain, while this Agreement remains in effect, a Property Broker's Surety Bond under 49 C.F.R. 387.307 or trust fund agreement authorized therein.

c. Makes the representations herein for the purpose of inducing CARRIER to enter into this Agreement.

d. Has authorized the person(s) executing this Agreement to do so on Broker's behalf.

3. Duties of CARRIER. CARRIER agrees to transport and deliver specified commodities, in accordance with the shipping instructions issued to it by H & N on behalf of various shippers, and to cause its driver(s) to be responsible for the loading and/or unloading of all commodities tendered to it by H & N as hereinafter set forth. CARRIER shall have the duty to determine that each shipment is properly loaded and CARRIER agrees to indemnify, defend, and hold harmless H & N and shipper against all loss, cost, damage, or liability of any kind or nature arising or growing out of improper or unsafe loading or unloading of any shipment. CARRIER'S acceptance of any shipment loaded or unloaded by CARRIER signifies that the number of pieces shown on the Bill of Lading is correct and that the lading is in apparent good condition.

4. Rates and Charges. CARRIER agrees to provide transportation services at the rates, charges, terms and conditions as set forth in the Schedule of Actual Rates and Charges, which is annexed hereto. If no schedule of Actual Rates and Charges is annexed to this Agreement, it shall be presumed that the rate for each shipment has been negotiated and agreed to verbally. H & N's settlement statement and payment to CARRIER shall be conclusively presumed to reflect the agreed rate unless CARRIER notifies H & N in writing within fifteen (15) days of its receipt of H & N's settlement statement and payment. H & N shall make payments to CARRIER weekly, commencing approximately two weeks from the date service is provided by CARRIER. If both parties have executed a Load Confirmation Sheet or similar document containing the terms of service and the applicable charges due CARRIER, said document will be presumed to manifest the intent of the parties with respect to all charges due CARRIER for the shipment or shipments described therein, notwithstanding any conflicting provisions in the Schedule of Actual Rates and Charges.

5. Equipment; Delivery Standard; Consequential Damages. CARRIER agrees to provide equipment which satisfies the reasonable needs of H & N and its customers, and to transport and deliver all shipments with reasonable dispatch unless a different service standard is required by H & N or its customers and accepted by CARRIER. Acceptance

of a shipment which is tendered with a specific delivery deadline shall constitute agreement by CARRIER to meet the specified delivery deadline, even if "reasonable dispatch" would have permitted a later delivery, and CARRIER agrees to assume liability for all consequential damages arising out of late delivery of any such shipment.

6. Independent Contractor Status of CARRIER. CARRIER, in its performance of this Contract, shall be and remain an independent contractor, and nothing contained herein shall be construed to be inconsistent with such relationship or status.

a. CARRIER shall, at its own cost and expense, provide and maintain motor truck equipment for use in the services to be performed hereunder which is adequate and satisfactory to H & N and its customers, and CARRIER shall also procure and maintain such licenses and permits as are required by local, state or federal authorities with respect to such transportation services and shall comply with the laws and regulations applicable thereto. CARRIER shall pay all costs and expenses relating to the transportation services, including but not limited to all expenses of loading and unloading, fuel, vehicle maintenance, taxes, tolls, fees, and all compensation for personal services, unless H & N or its customer expressly agrees to pay (or reimburse) carrier for any such expenses.

b. The equipment to be provided by CARRIER pursuant to this agreement shall be at all times in CARRIER'S exclusive possession, control and use and shall be operated pursuant to authorities, permits and other operating credentials which shall be issued in the name of the CARRIER, and not H & N Transport, Inc. or H & N Logistics, LLC and nothing herein shall be construed as a lease of the subject equipment by CARRIER to H & N Transport, Inc. notwithstanding the fact that CARRIER shall, in its performance of this contract, be pulling semi trailers owned by H & N Transport, Inc. CARRIER shall be fully and solely responsible to the public and all regulatory agencies having jurisdiction over the operation, including the Federal Motor Carrier Safety Administration and the Wisconsin Department of Transportation.

c. CARRIER warrants and represents that the motor vehicle equipment used in the performance of this contract shall be in good working condition and in full compliance with FMCSA regulations regarding such equipment; that the proper licenses, authorities, permits, and other operating credentials have been obtained, and that the driver(s) assigned to said equipment have all been properly qualified for such operations under the rules and regulations of the FMCSA found at 49 C.F.R. Part 391. CARRIER agrees to furnish H & N at H & H's reasonable request, copies of driver qualification documents, such as a Commercial Driver's License and medical certificate, which confirm that each driver is properly qualified and experienced for such operation.

d. CARRIER agrees that any penalties, forfeitures or fines incurred in the performance of this contract, including but not limited to such things as overweight, equipment or driving violations, shall be the sole responsibility of CARRIER or its driver, and not in any manner the responsibility of H & N or any of its customers, suppliers, parents, subsidiaries or affiliates.

f. CARRIER shall employ or contract with all persons required for the performance of this contract, and shall assume full responsibility for the payment of state and federal contributions or taxes for unemployment insurance, workers compensation, FICA, Medicare and any other taxes or contributions required with respect to the persons engaged in the performance of transportation services hereunder, and further agrees to comply with the applicable rules and regulations promulgated under such laws as are applicable thereto.

7. Liability. Neither party shall be liable for failure to perform or delay in the performance of any of the terms or provisions hereof when such failure or delay is occasioned by Acts of God, the public enemy, war, floods, storms or other acts of the elements, accidental fires, strikes, lockouts or other labor acts of regulations, or any other circumstances or conditions beyond the reasonable control of said party and without the fault or neglect of such party, whether similar or not to the foregoing. Notwithstanding CARRIER'S status as a contract carrier, the standard of liability for freight loss and damage shall be consistent with the common carrier standard of liability set as established by common law and the Carmack Amendment to the Interstate Commerce Act, and CARRIER shall be liable for the full actual value of any goods which are lost, destroyed or damaged in transit unless such loss, destruction or damage is caused by circumstances falling within a recognized exception to common carrier liability. No limitation of liability, released rates, or released valuations contained in any tariffs, classifications or bills of lading shall be applicable to any shipments transported under this Agreement, and any attempt by CARRIER to limit or excuse its liability other than in accordance with this paragraph shall be null and void.

8. Liability Insurance. CARRIER agrees that it shall procure and maintain at its expense, with reputable insurance carriers, the necessary types and kinds of public liability insurance required by the Federal Motor Carrier Safety Administration, but in no event less than \$750,000.00 combined single limit, and further agrees to furnish to the H & N upon request therefor, written certificates obtained from such insurance carrier or carriers, confirming that such insurance has been procured and is being paid for and maintained and naming H & N as an additional insured.

9. Cargo Insurance. CARRIER further agrees that it shall procure and maintain at its own expense, with reputable insurance carriers, cargo insurance in the amount of \$10,000.00 to compensate H & N, its customers, or the owner or consignee of the goods, for loss or damage to the property which comes into the possession of CARRIER in the performance of transportation service pursuant to this agreement. The cargo insurance shall be in the form required by 49 C.F.R. 387.301(b) and shall have no exclusions or restrictions that would not be accepted by the Federal Motor Carrier Safety Administration for a filing under the statutory requirement of 49 C.F.R. 387.301(b), but shall, in all respects, be identical to the cargo insurance filed in accord with said section. CARRIER shall, at H & N's request, cause its insurance carrier to forward forthwith to H & N a standard Certificate of Cargo Insurance, which Certificate shall name H & N as an additional insured and which shall require the insurance carrier to give H & N written notice ten (10) days prior to the cancellation of such cargo insurance.

10. Payment. H & N agrees to remit to CARRIER the sum specified in its settlement statement within twenty (20) days of the date of delivery of the goods, and submission to H & N of proper proof of delivery and other evidence that the CARRIER'S performance of the requested services has been completed.

11. Bill of Lading. All shipments transported pursuant to this Agreement shall be deemed to be governed by the terms and conditions of the Uniform Straight Bill of Lading (Motor Carrier), and this contract hereby incorporates by reference all the terms and conditions of said Uniform Straight Bill of Lading (Motor Carrier) as though fully set forth

herein. Unless otherwise agreed in writing, CARRIER shall become responsible for the freight when it receives or accepts possession thereof, regardless of whether a bill of lading has been issued. Failure on the part of the CARRIER to issue a bill of lading, or to execute a bill of lading acknowledging receipt of the cargo, shall not affect the liability of the CARRIER for loss of, or damage to, the cargo.

12. Contract Carrier Status. CARRIER represents and warrants to H & N that CARRIER is a duly licensed motor contract carrier of property pursuant to one or more contract carrier permits issued to CARRIER by the Federal Motor Carrier Safety Administration. CARRIER further represents and warrants to H & N that CARRIER is not certificated as a motor common carrier of property by the Federal Motor Carrier Safety Administration or, if CARRIER does hold common carrier authority, than none of the operations which CARRIER will conduct pursuant to this transportation agreement shall be conducted as a common carrier and further, that if CARRIER has published any motor carrier tariffs with the Federal Motor Carrier Safety Administration, or maintains unpublished tariffs or rates, none of the rates or terms and conditions set forth in any such tariffs which are inconsistent with the rates and terms established by this Agreement shall be applicable to any transportation services which CARRIER shall perform pursuant to this Agreement.

13. Back Solicitation. CARRIER agrees that in consideration of the substantial effort undertaken by H & N in locating the traffic which is the subject of this agreement, as well as the goodwill which now exists between H & N and its customers and further in consideration of the substantial and irreparable harm to H & N that would result from a breach hereof, that CARRIER shall not at any time during the term of this agreement is in force plus a period of one year immediately following the cancellation, expiration or termination of this agreement, solicit or attempt in any way to contract directly with any Shipper, Receiver, Consignor, Consignee, Buyer or Purchasing Party who controls the transportation, whose freight is first tendered by H & N to CARRIER, for the hauling which is the subject of this agreement, without the express written consent of H & N. CARRIER expressly agrees that in the event of a material breach of this provision by CARRIER, H & N may, at its election, seek injunctive relief, or money damages, or both, and that the measure of H & N's damages shall be the full amount of commissions or other compensation due H & N for all traffic transported in contravention of this agreement and further that should H & N elect to seek enforcement of this clause through litigation or other legal proceedings, CARRIER shall be liable to H & N for the costs and disbursements of such action including reasonable attorneys fees. Moreover, CARRIER shall be liable to H & N for interest on unpaid commissions or other compensation at a rate of 1.0% per month from the date of the breach, which is an annual percentage rate of 12.0%. For purposes of construing this clause, any shipment hauled by CARRIER in violation of this clause shall be deemed a separate breach of this agreement, and any waiver by H & N of any particular individual breach of this clause shall not be construed as a waiver by H & N of the terms and conditions of this clause for any subsequent breaches hereof.

14. CARRIER'S Lien. CARRIER hereby waives any lien it may have on the goods being transported pursuant to this Agreement under the Uniform Commercial Code or other provisions of law, and CARRIER agrees that it shall not bill or otherwise seek recovery from anyone other than H & N for freight charges earned by CARRIER in the

performance of this Agreement, nor shall CARRIER accept payment from any consignor, consignee or party other than H & N without the express written consent of H & N.

15. Assignment. CARRIER agrees that it will not assign or co-broker any shipments which are tendered to CARRIER by H & N pursuant to this Agreement, without H & N's prior written consent to do so.

16. Indemnity. CARRIER agrees to defend, indemnify and hold H & N and its customers harmless from any claims, demands, losses, damages or liability of any kind (including reasonable attorneys fees incurred by H & N and its customers) arising out of CARRIER'S performance of this Agreement, including but not limited to injuries to persons or property occurring at the premises of any consignor or consignee.

17. Nonexclusive Agreement. CARRIER and H & N mutually agree that this is not intended as an exclusive agreement, and that either party may enter into similar agreements with other carriers, brokers or freight forwarders, provided that such agreements do not violate paragraph 13 of this Agreement.

18. Breach of Agreement; Remedies. In the event of a material breach of a material term of this Agreement by CARRIER, H & N shall have the right to immediately terminate this Agreement for good cause and, in addition, shall have the right to withhold or setoff any payments which are due and owing to CARRIER for freight charges. This right of withholding or setoff is not an exclusive remedy, and H & N shall have and may exercise all other remedies it may have at law or in equity against CARRIER. H & N shall also be entitled to withhold or setoff any payments which are due and owing to CARRIER against any claims for freight loss, damage or delay which H & N or its customer has asserted against CARRIER.

19. Applicable Law; Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin as to both interpretation and performance except where expressly preempted by applicable federal statutes or regulations. In the event of any dispute or disagreement involving the interpretation or performance of this Agreement, including but not limited to claims for loss of or damage to cargo and disputes regarding applicable freight charges and terms of service, the parties agree that such disputes or disagreements shall be referred to the alternative dispute resolution program sponsored by the Transportation Lawyers Association, or similar mediation or arbitration service for disposition in accordance with the sponsoring organization's rules and procedures before bringing legal action in a court of law. The parties mutually agree to exert their best efforts to resolve all disputes by good faith settlement or negotiation whenever possible, and to make use of alternative dispute resolution mechanisms to the maximum extent practicable, and hereby authorize the Court to award all or a portion of its attorneys fees to the prevailing party if the Court finds that the non-prevailing party failed to negotiate in good faith a resolution of the dispute. Such an award of attorneys fees shall be committed to the sound discretion of the trial court. Any litigation involving the interpretation or performance of this Agreement shall be venued in Circuit Court for Iowa County, Wisconsin and CARRIER expressly consents to jurisdiction in said Court.

20. Term. This Agreement shall remain in effect and full force for one year from the date hereof, and shall be automatically renewed from year-to-year thereafter, subject to the right of termination by either party at any time on 30 days written notice to the other party.

21. Loss and Damage Claims. The provisions contained in 49 C.F.R. Part 370 shall govern the processing of claims for loss, damage, injury, or delay to property and the processing of salvage. CARRIER shall promptly investigate and attempt in good faith to resolve all such claims whether submitted initially to H & N or directly to CARRIER by the injured party.

22. Nondisclosure. CARRIER may not disclose the terms of this Agreement to anyone not a party to this Agreement without the prior written consent of H & N. CARRIER and its employees and agents shall treat all information relating to the identity of consignors and consignees, origins, destinations, commodities, volume and frequency of movements and methods of distribution as confidential and proprietary information of H & N and its customers and shall not divulge such information to third parties without the express written consent of H & N.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the day and year specified above.

ACCEPTED AND AGREED:

H & N LOGISTICS, LLC:

H & N Logistics, LLC

708 Heartland Trail, Suite 2000

Madison, WI 53717-2099

BY _____

TITLE _____

DATE _____

ACCEPTED AND AGREED:

CARRIER:

BY _____

TITLE _____

DATE _____

TAXPAYER ID # _____

US DOT# _____

MC# _____

PHONE # _____

MOBILE PHONE # _____

FAX # _____

EMAIL: _____